IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

LAURANCE KRIEGEL Plaintiff, v. WILLIAM K. SUTER, Defendant.	§ § § § § § § § §	NO. 2:07-CV-25

MEMORANDUM OPINION

Defendant serves as the Clerk of the Supreme Court of the United States. Plaintiff, *pro se*, seeks a writ of mandamus against him. Defendant has filed a *Motion to Dismiss* under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6). The motion is granted in accordance with Rule 12(b)(6).

I. BACKGROUND

On October 4, 1993, Defendant informed Plaintiff by letter that the Supreme Court denied his petition for a writ certiorari in *Kriegel v. U.S.*, No. 93-118. Thirteen years later, Plaintiff filed a "writ of error" with the Supreme Court alleging that *Kriegel v. U.S.*, No. 93-118 has not been "answered or set for docket according to Judicial [sic] practice." Defendant returned the writ because the Supreme Court's rules do not provide for a writ of error. A few weeks later, Plaintiff filed sixty-two copies of the same writ. Defendant returned it for the same reason as before. Plaintiff then filed sixty-two copies of an "Extraordinary Writ"; he says that it is "basically the same" as the writ of error. Defendant returned the Extraordinary Writ because the Supreme Court considers *Kriegel v. U.S.*, No. 93-118 to be "closed and no further consideration is possible."

Plaintiff filed the present case for a writ of mandamus compelling Defendant to place *Kriegel v. U.S.*, No. 93-118 and the Extraordinary Writ on the docket. He alleges that Defendant did not have authority to inform him by letter that the Supreme Court denied his petition for a writ of certiorari. And he alleges that the Supreme Court should have docketed his writs once he filed sixty-two copies of them.

II. DISCUSSION

Defendant has moved to dismiss this case under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6). *See* FED. R. CIV. P. 12(b). In analyzing a motion under 12(b)(6), this Court must accept all well-pleaded facts as being true and view them in a light most favorable to the nonmovant. *Capital Parks, Inc. v. Se. Adver. & Sales Sys., Inc.*, 30 F.3d 627, 629 (1994). Generally, this Court may look only to the allegations contained in the pleadings. *Mahone v. Addicks Util. Dist. of Harris County*, 836 F.2d 921, 935 (5th Cir. 1988). Yet it may "consider documents attached to or incorporated" in a complaint, such as the documents that Plaintiff attached to the original petition that he filed in state court before removal here. *See U.S. ex rel. Willard v. Humana Health Plan of Texas Inc.*, 336 F.3d 375, 379 (5th Cir. 2003). Dismissal is proper if Plaintiff clearly can prove no set of facts supporting his claim that will entitle him to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-45 (1957); *Garrett v. Commonwealth Mtg. Co.*, 938 F.2d 591, 594 (5th Cir.1991).

Even the most sympathetic reading of the pleadings reveals no facts and no theories that will subject Defendant to liability. *See e.g., Jacquez v. Procunier*, 801 F.2d 789, 791-92 (5th Cir. 1986). "Review on a writ of certiorari is not a matter of right, but of judicial discretion." SUP. CT. R. 10. Exercising that discretion, the Supreme Court denied Plaintiff's petition for a writ of certiorari. *See Kriegel v. U.S.*, 510 U.S. 865 (1993). The Supreme Court's rules required

Defendant to notify Plaintiff of that denial. SUP. CT. R. 16.3. Plaintiff had twenty-five days after the denial to file a petition for rehearing. SUP. CT. R. 44.2. He waited thirteen years and filed a challenge in the form of an Extraordinary Writ. No law required Defendant to docket such an untimely challenge. "Issuance by the [Supreme] Court of an extraordinary writ . . . is not a matter of right, but of discretion sparingly exercised." SUP. CT. R. 20.

III. CONCLUSION

Accordingly, the *Motion to Dismiss* is granted.

IT IS SO ORDERED.

Signed this 3rd day of May 2007.

/s/ Mary Lou Robinson

MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE